

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI**

**JOE E. MOONEY f/d/b/a MAGEE HOUSING
LIMITED, INC. AND SANDRA L. MOONEY,
DEBTORS**

CASE NO. 12-51538-KMS

COMMUNITY BANK

PLAINTIFF

VS.

ADV. PROC. NO. 12-05048-KMS

**JOE E. MOONEY f/d/b/a MAGEE HOUSING
LIMITED, INC. AND SANDRA L. MOONEY**

DEFENDANTS

MOTION TO COMPEL

COMES NOW Community Bank and files this Motion to Compel and asserts the following:

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 157, 28 U.S.C. § 1334, 11 U.S.C. § 523(a)(6) and 11 U.S.C. § 727(a)(2). This is an action arising in or related to the bankruptcy case. This is a core proceeding.

2. Debtor Joe E. Mooney (“Mooney”) operated a mobile home sales business in Magee, Mississippi, named Magee Housing.

3. Prior to the filing of the Bankruptcy petition, Mooney financed the purchase of ten (10) mobile homes through Community Bank. Community Bank is a secured creditor of Mooney and holds a valid, duly perfected security interest in these certain mobile homes as shown:

A. **Loan No. 1: for two (2) mobile homes**

Borrower: Magee Housing Limited

Guarantor: Joe E. Mooney

Loan No.: xxx6800

Date of Loan: 2-27-12

Collateral:

i. 2003 Champion 638 Mobile Home

Serial Number 210363810734

ii. 1995 Homes of Legend Mobile Home

Serial Number: HL 3700

The Loan Documents are attached hereto as Exhibit 1.

B. Loan No. 2:

Borrower: Magee Housing Limited
Guarantor: Joe E Mooney
Loan No.: xxx2180
Date of Loan: 02-27-12
Collateral: 2003 Chan Mobile Home
VIN CH3AL07737B

The Loan Documents are attached hereto as Exhibit 2.

C. Loan No. 3:

Borrower: Magee Housing Limited
Guarantor: Joe E. Mooney
Loan No.: xx1472
Date of Loan: 04-06-12
Collateral: 2009 Riv- 103 Mobile Home
VIN RB08AL14051

The Loan Documents are attached hereto as Exhibit 3.

D. Loan No. 4:

Borrower: Magee Housing Limited
Guarantor: Joe E. Mooney
Loan No.: xx7972
Date of Loan: 04-06-12
Collateral: 1999 Belm Sum Mobile Home
Serial Number 10132011

The Loan Documents are attached hereto as Exhibit 4.

E. Loan No. 5:

Borrower: Magee Housing Limited
Guarantor: Joe E. Mooney
Loan No.: xxx0671
Date of Loan: 04-27-12
Collateral: 1998 Redman Mobile Home
Serial Number 14719575

The Loan Documents are attached hereto as Exhibit 5.

F. Loan No. 6:

Borrower: Magee Housing Limited
Guarantor: Joe E. Mooney
Loan No.: xxx7667
Date of Loan: 05-09-12
Collateral: 1996 Oakwood DW Mobile Home
Serial Number HDTN12CO1537

The Loan Documents are attached hereto as Exhibit 6.

G. Loan No. 7:

Borrower: Magee Housing Limited
Guarantor: Joe E. Mooney
Loan No.: xx1288
Date of Loan: 05-09-2012
Collateral: 1993 Southern Mobile Home
Serial Number: SSDAL5294

The Loan Documents are attached hereto as Exhibit 7.

H. Loan No. 8:

Borrower: Magee Housing Limited
Guarantor: Joe E. Mooney
Loan No.: xx4413
Date of Loan: 05-25-12
Collateral: 1997 Chan 601 Mobile Home
VIN CH1AL16159

The Loan Documents are attached hereto as Exhibit 8.

I. Loan No. 9:

Borrower: Magee Housing Limited
Guarantor: Joe E. Mooney
Loan No.: xxx0600
Date of Loan: 10-27-12
Collateral: 1994 Brig VY Mobile Home
VIN 14713744AB

The Loan Documents are attached hereto as Exhibit 9.

4. Mooney has sold or otherwise disposed of eight (8) of the ten (10) mobile homes¹ out of trust, without satisfying Community Bank's liens. In doing so, Mooney has converted to himself Community Bank's collateral and/or proceeds from the sale of the mobile homes.

5. Mooney sold five (5) of the mobile homes to home buyers in transactions in which Mooney financed the purchases. Those sales as detailed as follows:

A. 1996 Oakwood DW Mobile Home
Serial Number HDTN12CO1537
Salesman: Joe Mooney
Sold to Cynthia Patterson
Sales Price: \$16,500 + 561.00 (sales tax) = \$17061.00
Financed through Magee Housing Limited Inc.: \$13,440.00

A copy of this Bill of Sale is attached as Exhibit 10.

B. 2003 Champion 638 Mobile Home
Serial Number 210363810734
Salesman: Joe Mooney
Sold to Renetha McLeod
Sales Price: \$10,000 + 340 (sales tax) = \$10,340
Financed through Magee Housing Limited Inc.: \$9,600.00

A copy of this Bill of Sale is attached as Exhibit 11.

C. 1995 Homes of Legend mobile home
Serial Number: HL 3700
Salesman: Joe Mooney
Sold to Stanley & Belinda Buckley
Sales Price: \$17,000 + 578.00 = \$17,578.00
Financed through Magee Housing Limited Inc. \$10,500.00

A copy of this Bill of Sale is attached as Exhibit 12.

¹ Two of the mobile homes were repossessed by Community Bank prior to Mooney filing his bankruptcy petition.

D. 1993 Southern Mobile Home
Serial Number: SSDAL5294
Salesman: Joe Mooney
Sold to Tammy Davis and Savanna Davis
Sales Price: \$ 14,500.00 + 493.00 (sales tax) = \$14,993.00
Financed through Magee Housing Limited Inc.: \$9,180.00

A copy of this Bill of Sale is attached as Exhibit 13.

E. 1998 Redman Mobile Home
Serial Number 14719575
Salesman: Joe Mooney
Sold to Chester & Jennifer Griffin
Sales Price: \$25,000.00 = 850.00 (sales tax) = \$25,850.00
Financed through Magee Housing Limited Inc.: \$23,000.56

A copy of this Bill of Sale is attached as Exhibit 14.

Mooney sold those mobile homes without satisfying Community Bank's liens. Additionally, Mooney is collecting payments from the occupants of those mobile homes without making payments to Community Bank. Accordingly, Mooney has jeopardized and continues to jeopardize Community Bank's security interest in its collateral. Moreover, Mooney has converted to himself Community Bank's collateral and/or proceeds from the sale of the mobile homes.

6. With respect to the five (5) mobile homes that Mooney sold and financed for the home buyers, the Court should compel Mooney to turn over any and all sales proceeds, mortgage payments, and any other payments with respect to these mobile homes to Community Bank. Additionally, the Court should compel Mooney to assign the sales contracts on those mobile homes to Community Bank.

7. Mooney has sold or disposed of three (3) of the mobile homes it financed the purchase of through Community Bank. Mooney has sold or otherwise disposed of these mobile homes out of trust, without satisfying Community Bank's liens. In doing so, Mooney has converted

to himself Community Bank's collateral and/or proceeds from the sale of the mobile homes. The Court should compel Mooney to: a) disclose what he has done with these mobile homes; b) turn over any and all sales documents, sales proceeds, mortgage payments, and any other payments with respect to these mobile home to Community Bank; c) process the title applications if applicable; and d) assign the sales contracts on those mobile homes to Community Bank if applicable.

8. Additionally, Mooney sold two mobile homes to separate clients of Community Bank, Jessica A. Warren and R. David Bond, who purchased the mobile homes from Mooney and financed those purchases through Community Bank. The mobile homes purchased by Warren and Bond respectively are not any of the ten (10) that Community Bank originally financed for Mooney. The Promissory Notes and other documents evidencing the financing of the mobile homes through Community Bank are attached as Exhibits 15 (Warren) and 16 (Bond). These home buyers, Jessica A. Warren and R. David Bond, filled out applications for titles in their names with Community Bank remaining as the lienholder. *See Exhibits 15 and 16.* Mooney never processed the applications, and the home buyers never received their titles. Accordingly, Mooney has jeopardized and continues to jeopardize Community Bank's security interest in its collateral as part of his scheme to convert sales proceeds from the banks through which he financed his purchase of mobile homes.

9. With respect to the two mobile homes Mooney sold to Warren and Bond, the Court should compel Mooney to process the title applications so that titles can be issued to the home buyers showing Community Bank as the lienholder on the mobile homes.

WHEREFORE, PREMISES CONSIDERED, Community Bank prays for an order from the Court compelling Mooney as follows:

A. With regard to the five (5) mobile homes that Mooney sold out of trust to Cynthia Patterson, Renetha McLeoad, Stanley and Belinda Buckley, Tammy David and Savanna Davis, and Chester and Jennifer Griffin, the Court should compel Mooney to turn over any and all sales proceeds, mortgage payments, and any other payments with respect to these mobile homes to Community Bank. Additionally, the Court should compel Mooney to assign the sales contracts on these mobile homes to Community Bank;

B. With regard to the three (3) mobile home Mooney sold or disposed of out of trust, which Community Bank has no information on, the Court should compel Mooney to: a) disclose what he has done with those mobile homes; b) turn over any and all sales documentation, sales proceeds, mortgage payments, and any other payments with respect to this mobile home to Community Bank; c) process the title applications if applicable; and d) assign the sales contracts on those mobile homes to Community Bank if applicable; and

C. With regard to the two (2) mobile homes Mooney sold out of trust to Jessica A. Warren and R. David Bond, the Court should compel Mooney to process the title applications so that titles can be issued to the home buyers showing Community Bank as the lienholder on the mobile homes.

DATED: February 27, 2013.

Respectfully submitted,

COMMUNITY BANK

By: /s/ Laura M. Glaze
Stephen E. Gardner (MSB #4749)
Laura M. Glaze (MSB # 100625)

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CERTIFICATE OF SERVICE

I, Laura M. Glaze, do hereby certify that I have this date transmitted via Electronic Case Filing, as it appears on this date in the Court registered e-filers of CM/ECF and/or U.S. Mail, postage prepaid, a true and correct copy of the above and foregoing Motion to Compel to the parties below:

Electronically mailed to:

dware@warelawfirm.com

7trustee@cableone.net

USTPRegion05.JA.ECF@usdoj.gov

DATED: February 27, 2013.

/s/ Laura M. Glaze
Laura M. Glaze